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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE ESTEBAN CARDENAS ZUNIGA,

Defendant and Appellant.

G055549

(Super. Ct. No. 15CF2751)

OPINION

Appeal from a judgment of the Superior Court of Orange County, Gregg L. Prickett, Judge. Affirmed.

Allen G. Weinberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Scott C. Taylor and Alana Cohen Butler, Deputy Attorneys General, for Plaintiff and Respondent.

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Jose Esteban Cardenas Zuniga appeals his first degree murder conviction for strangling 24-year old Yacshicka Watts to death in 2007. (Pen. Code, § 187, subd. (a); all further undesignated statutory references are to this code.) The trial court sentenced Zuniga to a term of 25 years to life. Zuniga challenges the sufficiency of the evidence to support the jury's conclusion the slaying was murder in the first degree, based on premeditation and deliberation. He also requests that we review for additional discoverable information, if any, the record of the sealed proceedings the trial court conducted pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*). The Attorney General does not oppose the request. As we explain, the evidence amply supports the jury's first degree murder verdict. Additionally, the trial court did not abuse its discretion by failing to identify further discoverable material in its *Pitchess* review. We therefore affirm the judgment.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Marquis Allen admitted to Watts that he was a pimp after he met her in Hemet in 2007. On October 19, 2007, Allen and his brother decided to drive two women, Red and Latoya, to Santa Ana to engage in prostitution. Watts, who occasionally had worked as a prostitute, asked to come along. Between midnight and 1:00 a.m., the group pulled up in Allen's white Cadillac to an area along Harbor Boulevard known for prostitution.

The women exited the vehicle, and Watts was soon approached by a man named Norberto who drove her in his pickup truck to the nearby Days Inn on Harbor Boulevard. The motel's video surveillance footage verifies Watts and Norberto checked into a room around 1:30 a.m. The video also shows Watts reentered Allen's Cadillac around 2:00 a.m.

Allen later explained Watts told him she had a headache, so he drove her to a convenience store to buy medicine. Allen returned with Watts to the Days Inn around

2:15 a.m., where he believed she would go to her room to rest and charge her phone. The video footage shows Watts briefly spoke with Norberto at his truck around 2:18 a.m. Norberto departed soon after, and Watts walked by the motel office toward Harbor Boulevard at 2:28 a.m. That was the last time she was seen alive.

Allen recalled that Watts gave him money from her “dates” only once or twice that evening. Watts told Allen a man paid her but she “didn’t have to do nothing with [him].” After investigators later located Norberto, they excluded him as a suspect based on the “physical evidence.” It is not entirely clear from the record, but it appears his DNA did not match the sperm sample from the lone male DNA profile eventually recovered on Watt’s body. Nor did Norberto’s pickup truck match the description of a large black sports utility vehicle that a tow truck driver noticed on the night Watts disappeared in the same secluded, seldom-trafficked area where her body was found later that morning.

A homeless man found Watts’s body about two miles from the Days Inn around 5:30 a.m. by some trash cans behind an auto shop in an industrial district. Her corpse rested on the ground in a fetal position with her jeans pulled down below her hips. Her body was cold to the touch and rigor mortis had set in. Although Watts had a purse when she was with Allen earlier in the evening, no wallet, keys, phone, or purse were found.

The deputy coroner who examined Watts’s body at the scene estimated she died between 3:00 a.m. and 5:00 a.m. Autopsy results showed recent bruising on Watts’s neck near her jaw line and hemorrhages in her eyes. Internal examination revealed the hyoid and thyroid bones in her neck had been fractured, a common sign of the forcible compression necessary for strangulation. Testifying as an expert witness, the medical examiner estimated it would take between three and eight minutes of pressure to asphyxiate a person. The length of time may increase if the victim had a healthy heart, as Watts did.

During the autopsy, the examiner used swabs to collect DNA evidence. DNA test results showed that sperm originating from one person was located in Watts's vaginal, paravaginal, and perianal areas. The same DNA profile was recovered in swabs from Watts's left and right breasts, and in trace amounts from her neck. The DNA profile did not produce a match when uploaded to a law enforcement database.

Traditional investigative measures initially proved fruitless. A grainy surveillance video from a business near where Watts's body was found showed a vehicle arrived around 3:20 a.m. and departed approximately 45 minutes later at 4:07 a.m. Investigators had no success enhancing the poor quality footage to obtain the make, model, or license plate of the vehicle, though it was clear it was not Allen's white Cadillac. Investigators collected DNA samples from Allen and his brother, which, along with samples obtained from 42 men arrested for soliciting prostitutes in the months after the murder failed to produce a match. When interviews with prostitutes and other individuals in the area yielded no results, the investigation went cold for several years.

Then, in 2013, Zuniga was arrested for drug possession and providing false identification. His misdemeanor plea agreement to the false identification charge required him to provide a DNA sample. When uploaded to the law enforcement database, Zuniga's DNA profile was flagged for further investigation. The investigation revealed Zuniga's DNA matched the DNA recovered from Watts's body.

Police questioned Zuniga in 2014. They confirmed that in October 2007 he lived on 10th Street in Santa Ana, less than one mile from where Watts's body was found. Initially, Zuniga denied ever having been with a prostitute. Later in his interview, he admitted an encounter he said occurred around 9:00 or 10:00 p.m. on an October evening in 2007, when his friends brought a prostitute home. Zuniga and the two other men each had sex with her. He wore a condom during intercourse in which he ejaculated. He stated when the woman removed it, he touched her thigh with his penis. Zuniga grabbed her shoulders during sex, but denied touching her neck. He said the woman was

tall and dark-skinned. When shown a picture of Watts, he denied Watts was the prostitute he was with. He could not offer any explanation as to why his DNA was recovered on Watts's body.

Zuniga testified at trial. He stated he did not own a car and did not drive at night because he did not want to be stopped by police without a driver's license, though he admitted this was a risk he took during the day. He believed his friends had picked up a prostitute on Harbor Boulevard the night he had sex with her. He was not aggressive with the woman and never put his hands around her throat; he did not choke her. Zuniga also claimed he did not really look at her when they had sex, so he did not notice details about her appearance. He denied raping or killing Watts.

## **DISCUSSION**

### **1. *Substantial Evidence Supports the Jury's Verdict***

Zuniga challenges the sufficiency of the evidence to support the jury's first degree murder finding. The jury's verdict form reflects that none of the jurors relied on the felony-murder rule as a basis for the guilty verdict. Accordingly, Zuniga contends the evidence does not support the prosecutor's alternate theory for first degree murder based on premeditation and deliberation.

“Our task in deciding a challenge to the sufficiency of the evidence is a well-established one. ‘[W]e review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’” (*People v. Solomon* (2010) 49 Cal.4th 792, 811.)

In doing so, “the appellate court presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.’ [Citation.] This standard applies whether direct or circumstantial evidence is involved. ‘Although it

is the jury's duty to acquit a defendant if it finds the circumstantial evidence susceptible of two reasonable interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court that must be convinced of the defendant's guilt beyond a reasonable doubt. [Citation.] "If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment." (People v. Catlin (2001) 26 Cal.4th 81, 139.)

As the Supreme Court has explained, "A verdict of deliberate and premeditated first degree murder requires more than a showing of intent to kill. [Citation.] 'Deliberation' refers to careful weighing of considerations in forming a course of action; 'premeditation' means thought over in advance." (People v. Koontz (2002) 27 Cal.4th 1041, 1080.) But that careful weighing of considerations need not consume any specific amount of time. "Premeditation and deliberation can occur in a brief interval. 'The test is not time, but reflection. 'Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly.'" (People v. Sanchez (2001) 26 Cal.4th 834, 849.)

Evidence of premeditation and deliberation generally falls into three categories: (1) planning activity, (2) motive, and (3) the manner of killing. (People v. Anderson (1968) 70 Cal.2d 15, 26-27.) These factors are not exhaustive or exclusive; they are "descriptive, not normative," and therefore no particular factor or combination of factors must be present, nor given the same weight in every case. (People v. Perez (1992) 2 Cal.4th 1117, 1125.) Instead, the purpose of the Anderson factors is to aid reviewing courts in determining whether the evidence supports "an inference that the killing was the result of preexisting reflection and weighing of considerations rather than mere unconsidered or rash impulse." (Perez, at p. 1125.)

It is well-established that manual strangulation generally supports an inference of premeditation and deliberation. "This prolonged manner of taking a

person's life, which requires an offender to apply constant force to the neck of the victim, affords ample time for the offender to consider the nature of his deadly act.” (*People v. Hovarter* (2008) 44 Cal.4th 983, 1020.) “[W]here strangulation occurs over a prolonged period of time, a rational juror could find that the killer committed a premeditated and deliberate murder.” (*People v. Shamblin* (2015) 236 Cal.App.4th 1, 11 (*Shamblin*).) In *Shamblin*, the expert's testimony that manual strangulation of the victim “could have taken anywhere from one to five minutes” supported the jury's first degree murder verdict. (*Ibid.*) Similarly, in *Hovarter*, evidence of premeditation and deliberation was sufficient since evidence showed the defendant strangled the victim over a period lasting between five and eight minutes. (*Hovarter*, at pp. 1019-1020.) Likewise, a pathologist's testimony “that lethal pressure had been applied [to the victim's] neck for a ‘long’ time” supported the jury's premeditation finding in *People v. Stitely* (2005) 35 Cal.4th 514, 544.

Zuniga relies on *People v. Rowland* (1982) 134 Cal.App.3d 1, 8 (*Rowland*), in which the Court of Appeal found the fact that the victim had been strangled with an electric cord, “a normal object to be found in a bedroom,” was insufficient to support a finding of premeditation and deliberation. *Rowland*, however, predated Supreme Court authority observing that ligature strangulation is an inherently deliberate act. (*People v. Davis* (1995) 10 Cal.4th 463, 510.)

In any event, each case must be reviewed on its own facts. In *Rowland*, there was no evidence offered concerning how long the defendant held the cord around the victim's throat; nor was there expert testimony about the length of time it would take to asphyxiate a person in that manner. In *Shamblin*, the expert testified that under the circumstances in that case strangulation could occur in as little as a minute's time. (*Shamblin, supra*, 236 Cal.App.4th at p. 11.) If that were the state of the evidence here, and the victim had been elderly, rather than a young person like Watts with her strong and healthy heart, the issue might be closer.

But here the minimum of three or four minutes—and likely longer—during which Zuniga strangled Watts amply supports the jury’s finding he committed first degree murder. Moreover, contrary to Zuniga’s claim, there was some evidence of planning given the secluded area in which he perpetrated the crime, near a tow yard that, as the tow truck driver explained, ordinarily saw no visitors at that time of night. We must view this evidence in the light most favorable to the jury’s verdict. There was no evidence Zuniga may have inadvertently began choking Watts during a sex act, reducing the time it took to knowingly and deliberately asphyxiate her, because he denied engaging in any such sexual activity with the prostitute he admitted patronizing. In sum, it was the jury’s exclusive province to weigh the evidence, which as a whole supports the jury’s first degree murder verdict.

2. *Hearing and Ruling on Zuniga’s Pitchess Motion: No Abuse of Discretion*

Before trial, Zuniga filed a *Pitchess* motion seeking disclosure of information by the Santa Ana and Garden Grove Police Departments from their respective personnel files for Jeff Krutsinger, a former officer who worked for both agencies over the course of the investigation in this case. Krutsinger obtained a three-hour surveillance clip from the night Watts was last seen and a month of surveillance video from around the same time period from the Days Inn. The prosecutor provided in discovery only the three-hour clip because the longer video could not be located. The trial court found good cause to review the officer’s files based on the defense allegation the officer may have been responsible for the loss of the missing video. The defense sought disclosure of personnel records that might tend to undermine Krutsinger’s credibility, including acts of moral turpitude, any history of falsifying reports, and relevant complaints, investigations, or disciplinary action against the officer.

The trial court conducted an in camera review of Krutsinger’s personnel files with the city attorney and custodian of records for each city present. (Evid. Code,

§ 1045, subd. (b).) The court ordered disclosure to the defense of some information in the files, required that a copy of that information be provided to the court, ordered the cities not to destroy the files without a court order, and sealed the record of the proceedings.

On appeal, the parties agree we should independently review the sealed proceedings to ensure the proper procedures were followed and to determine whether any further disclosures are required. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1226-1232.) The abuse of discretion standard governs our review. (*People v. Guyton* (2018) 20 Cal.App.5th 499, 509; *People v. Samayoa* (1997) 15 Cal.4th 795, 827.)

We have reviewed the transcript of the in camera hearing. The trial court placed each custodian of records under oath in turn as the court inquired regarding procedures in each agency for documenting complaints, investigations, and disciplinary action, if any, involving an officer. Of course, a personnel file will include many other forms and documentation, and the court observed Krutsinger's "standard police personnel file" was no different. The court then provided a detailed inventory of each agency's file for Krutsinger, including a description of each document in the file as the court reviewed it. As noted, the court ordered disclosure of some information from the files to the defense. We find the court's detailed description of the records it reviewed "adequate for purposes of conducting a meaningful appellate review." (*People v. Myles* (2012) 53 Cal.4th 1181, 1209.) Our review reveals no missteps in the procedure the court employed and nothing suggests an abuse of discretion in failing to order disclosure of further documents or information from the files. Consequently, the *Pitchess* proceedings furnish no basis for reversal.

## **DISPOSITION**

The judgment is affirmed.

GOETHALS, J.

WE CONCUR:

MOORE, ACTING P. J.

IKOLA, J.